



Sales and Use Tax Division

This form includes an overview of many changes primarily enacted by the 2017 Session of the General Assembly to the taxes administered by the Sales and Use Tax Division. The annual *Tax Law Changes* publication produced by the Department should be available by the end of the calendar year on the Department's website, www.dornrc.com, and will contain detailed explanations of the 2017 legislative changes. To receive information by email including forthcoming information on many of the items contained herein, subscribe to the Department's Tax Updates Email List ("eAlerts") at www.dornrc.com/electronic/taxupdates.html. Legislative changes may supersede any information previously set forth in the Sales and Use Tax Administrative Rules, Technical Bulletins, Notices, Directives, Private Letter Rulings, or other information published by the Department relating to any subject matter of the legislation.

As of October 1, 2017, the general State, applicable local, and applicable transit rates of sales and use tax imposed on the sales price of tangible personal property, certain digital products, and certain services is 6.75% in sixty-seven (67) counties; 7.00% in Alexander, Anson, Ashe, Buncombe, Cabarrus, Catawba, Cherokee, Cumberland, Davidson, Duplin, Edgecombe, Greene, Halifax, Harnett, Haywood, Hertford, Jackson, Lee, Martin, Montgomery, New Hanover, Onslow, Pitt, Randolph, Robeson, Rowan, Sampson, Surry, and Wilkes Counties; 7.25% in Mecklenburg and Wake Counties; and 7.50% in Durham and Orange Counties.

The combined general rate of tax imposed on the sales price of or the gross receipts derived from telecommunications service and ancillary service, video programming, piped natural gas, electricity, spirituous liquor, and aviation gasoline and jet fuel continues to be 7.00% in all one hundred (100) counties.

PART I: SALES TAX CHANGES

Effective for filing periods beginning on or after March 1, 2016 and ending before January 1, 2018

Sales Tax Base Expansion Protection Act – N.C. Gen. Stat. § 105-244.3 was enacted and provides the Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016 and ending before January 1, 2018 if one or more conditions set forth in the statute apply and the retailer did not receive specific written advice from the Secretary of Revenue for the transactions at issue for the laws in effect for the applicable periods. To review the conditions and limitations specified within the statute refer to [Important Notice: Sales Tax Base Expansion Protection Act](#) dated September 6, 2017 and published on the Department's website.

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

Freestanding Appliance – N.C. Gen. Stat. § 105-164.4(a)(1), as amended, provides "[a] sale of a freestanding appliance is a retail sale of tangible personal property" which is subject to the general State, applicable local, and applicable transit rates of sales and use tax. N.C. Gen. Stat. § 105-164.3(1d) defines "freestanding appliance" as "[a] machine commonly thought of as an appliance operated by gas or electric current. Examples include installation of a dishwasher, washing machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in."

REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

The general State, applicable local, and applicable transit rates of sales and use tax generally apply to the sales price of or the gross receipts derived from "repair, maintenance, and installation services" sold at retail unless exempt by statute or established by records maintained by the retailer. Pursuant to N.C. Gen. Stat. § 105-164.4(a)(16), the imposition of sales and use tax on the sales price of or the gross receipts derived from "repair, maintenance, and installation services" generally includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property.

Repair, Maintenance, and Installation Services Definition – The definition of “repair, maintenance, and installation services,” as amended and recodified in N.C. Gen. Stat. § 105-164.3(33/), includes the activities listed below and applies to tangible personal property, a motor vehicle, digital property, and real property.

- a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
- d. To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service. The term does not include an installation defined as a capital improvement in N.C. Gen. Stat. § 105-164.3(2c)d.
- e. To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.

The term “repair, maintenance, and installation services” does not include services used to fulfill a real property contract taxed in accordance with N.C. Gen. Stat. § 105-164.4H.

Certain Repair, Maintenance, and Installation Services and Service Contract Exemptions – N.C. Gen. Stat. § 105-164.13(61a), as amended, provides “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed [below] are exempt from [sales and use] tax. **Except as otherwise provided in this [exemption], property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from [sales and use] tax . . . are taxable.** (Emphasis added.) The list of repair, maintenance, and installation services and service contracts exempt from [sales and use] tax is as follows:

- a. An item exempt from [sales and use] tax under . . . Article [5 (Sales and Use Tax) of the Revenue Act]. Property and services used to fulfill a service or contract exempt under this sub-subdivision are exempt from [sales and use] tax under . . . Article [5 (Sales and Use Tax) of the Revenue Act]. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under [N.C. Gen. Stat. § 105-164.13](62a).
- b. A motor vehicle emissions and safety inspection fee imposed pursuant to [N.C. Gen. Stat. §] 20-183.7, provided the fee is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- c. Services performed for a person by a related member [as defined by N.C. Gen. Stat. § 105-130.7A].
- d. Cleaning of real property, except where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to tax under [N.C. Gen. Stat. §] 105-164.4 or for a pool, fish tank, or other similar aquatic feature. Examples of cleaning of real property include custodial services, window washing, mold remediation services, carpet cleaning, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing other than for a pool.
- e. Services on roads, driveways, parking lots, and sidewalks.
- f. Removal of waste, trash, debris, grease, snow, and other similar items from property, other than a motor vehicle. The exemption applies to household and commercial trash collection and removal services. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.
- g. The following inspections:
 1. An inspection performed where the results are included in a report for the sale or financing of real property.
 2. An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.
 3. An inspection to a system that is a capital improvement under [N.C. Gen. Stat. §] 105-164.3(2c)f., **provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.** (Emphasis added.)
- h. Alteration and repair of clothing, except where the service constitutes a part of the gross receipts derived from the rental of clothing subject to tax under [N.C. Gen. Stat. §] 105-164.4 or for alteration and repair of belts and shoes.
- i. Pest control service. For purposes of this exemption, the term ‘pest control service’ means the application of pesticides to real property.
- j. Moving services. For purposes of this exemption, the term ‘moving services’ means a service for hire to transport or relocate a person’s existing belongings to or from any destination.
- k. Self-service car washes and vacuums.
- l. A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.
- m. A qualified aircraft or a qualified jet engine.

- n. Funeral-related services, including services for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.
- o. Services performed on an animal, such as hoof shoeing and microchipping a pet.”

Effective retroactively to January 1, 2017 through June 30, 2018

If the Secretary of Revenue determines that a retailer paid sales and use taxes on a product that becomes a part of or is applied to a purchaser’s property as part of a retail sale of taxable repair, maintenance, and installation services to real property that occurs on or after January 1, 2017 through June 30, 2018, the Secretary will allow the retailer to offset the sales tax liability due on the taxable repair, maintenance, and installation services by the amount of sales and use tax originally paid on the product. The retailer must be able to substantiate the amount of tax originally paid on the product by invoice or other documentation. Additionally, a retailer entitled to a credit for tax originally paid on a product as provided above, may reduce the taxable receipts for an applicable reporting period by the taxable purchase amount of the product on which tax was originally paid in lieu of a determination being made by the Secretary. The credit provision does not apply to a product stored, used, or consumed by the retailer unless the product becomes a part of or is applied to a purchaser’s property as part of a retail sale of repair, maintenance, and installation services to real property.

**REAL PROPERTY CONTRACTS, REAL PROPERTY CONTRACTORS,
AND CAPITAL IMPROVEMENTS**

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

Real Property Contracts Imposition of Sales and Use Taxes – N.C. Gen. Stat. § 105-164.4(a)(16), as amended, provides, in part, that a real property contract is taxed in accordance with N.C. Gen. Stat. § 105-164.4H. Additionally, N.C. Gen. Stat. § 105-164.4(a)(13) was repealed. A real property contractor is the consumer of the tangible personal property or digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or is used to fulfill the contract. Where a real property contractor purchases tangible personal property or digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due to this State is not paid at the time of purchase, the provisions of N.C. Gen. Stat. § 105-164.6 with regard to use tax apply. The statute, as amended, provides that the application of sales and use taxes applies to a real property contract for a capital improvement no matter that the capital improvement is installed or becomes part of leased or rented property. N.C. Gen. Stat. § 105-164.4H(e) is repealed; however, the definitions have been included in N.C. Gen. Stat. § 105-164.3.

Bundled Transaction – N.C. Gen. Stat. § 105-164.3(1i), as amended, clarifies that “[t]he term [bundled transaction] does not apply to real property and services to real property.”

Real Property – N.C. Gen. Stat. § 105-164.3(33d), as amended, defines “real property” as any one or more of the following: land, building or structure on land, permanent fixture on land, or a manufactured home or a modular home on land.

Real Property Contract – N.C. Gen. Stat. § 105-164.3(33e), as amended, defines “real property contract” as “[a] contract between a real property contractor and another person to perform a capital improvement to real property.”

Real Property Contractor – N.C. Gen. Stat. § 105-164.3(33f), as amended, defines “real property contractor” as “[a] person that contracts to perform a real property contract in accordance with [N.C. Gen. Stat. §] 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for purposes of Article [5 (Sales and Use Tax) of the Revenue Act].”

Capital Improvement – N.C. Gen. Stat. § 105-164.3(2c), as amended, defines “capital improvement” as “[o]ne or more of the following:

- a. New construction, reconstruction, or remodeling.
- b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- c. Installation of utilities on utility-owned land, right-of-way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under [N.C. Gen. Stat. §] 105-164.4.
- d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:
 - 1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - 2. Is depreciated under the [Internal Revenue Service] Code.
 - 3. Is expensed under Section 179 of the [Internal Revenue Service] Code.

- e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation service [as defined in N.C. Gen. Stat. § 105-164.3(33)].
- f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- h. Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.
- i. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.
- j. Landscaping. [N.C. Gen. Stat. § 105-164.3(16e) defines “landscaping” as “[a] service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.”]
- k. Addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in [N.C. Gen. Stat. § 105-164.3](33/) . . . as a repair, maintenance, and installation service.”

New Construction – N.C. Gen. Stat. § 105-164.3(24a) defines “new construction” as “[c]onstruction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.”

Reconstruction – N.C. Gen. Stat. § 105-164.3(33g) defines “reconstruction” as to “[r]ebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.”

Remodeling – N.C. Gen. Stat. § 105-164.3(33i) defines “remodeling” as “[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single repair, maintenance, and installation service. The term does not include a transaction where the true purpose is a repair, maintenance, and installation service no matter that another repair, maintenance, and installation service is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.”

Renovation – N.C. Gen. Stat. § 105-164.3(33k) defines “renovation” as having the “[s]ame meaning as the term ‘remodeling.’ ”

Retailer-Contractor – N.C. Gen. Stat. § 105-164.3(35a) defines the term “retailer-contractor” as “[a] person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.” N.C. Gen. Stat. § 105-164.4H(b)(1) provides a retailer-contractor acts as a real property contractor “when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to [N.C. Gen. Stat. §] 105-164.28 provided the retailer-contractor also purchases inventory items or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor’s purchase price of the property. Property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to [sales and use tax].”

Substantiation of Type of Liability – N.C. Gen. Stat. § 105-164.4H(a1) is added and provides, generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to tax in accordance with N.C. Gen. Stat. § 105-164.4(a)(16), unless a person substantiates that a transaction is subject to tax as a real property contract in accordance with N.C. Gen. Stat. § 105-164.4H(a), subject to tax as a mixed transaction in accordance with N.C. Gen. Stat. § 105-164.4H(d), or the transaction is not subject to tax. A person may substantiate that a transaction is a real property contract or a mixed transaction by records that establish the transaction is a real property contract or by receipt of an affidavit of capital improvement (Form E-589CI). The receipt of an affidavit of capital improvement, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a capital improvement, and the transaction is subject to tax in accordance with N.C. Gen. Stat. § 105-164.4H(a). A person that issues an affidavit of capital improvement is liable for any additional tax due on the transaction in excess of tax paid on related purchases under N.C. Gen. Stat. § 105-164.4H(a), if it is determined that the transaction is not a capital improvement, but rather the transaction is subject to tax as a retail sale. A person who receives an affidavit of capital improvement from another person, absent fraud or other egregious activities, is not liable for any additional tax on the gross receipts from the transaction if it is determined that

the transaction is not a capital improvement. The Secretary of Revenue may establish guidelines for transactions where an affidavit of capital improvement is not required, but rather a person may establish by records that such transactions are subject to tax in accordance with N.C. Gen. Stat. § 105-164.4H(a).

Joint and Several Liability – N.C. Gen. Stat. § 105-164.6(b), as amended, provides “[t]he tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as provided in [N.C. Gen. Stat. §] 105-164.4H(a) regarding receipt of an affidavit of capital improvement. The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.” N.C. Gen. Stat. § 105-164.4H(b1) regarding joint and several liability is repealed and the provisions of N.C. Gen. Stat. § 105-164.6(b) apply.

Installation Charge Exemption for Certain Purchases by a Real Property Contractor – N.C. Gen. Stat. § 105-164.13(61c), as amended, provides an exemption from sales and use tax for “[i]nallation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing installation services for a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees’ wages, or labor purchased from a third party that would otherwise be included in the definition of ‘purchase price.’”

Effective January 1, 2017, and applies to sales and purchases made on or after such date

Installation Charges . . . Real Property Contract . . . – N.C. Gen. Stat. § 105-164.13(61d) is added and provides an exemption for “[i]nallation charges that are a part of the sales price of or gross receipts derived from repair, maintenance, and installation services or installation charges only purchased by a real property contractor to fulfill a real property contract, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees’ wages, or labor purchased from a third party that would otherwise be included in the definition of ‘purchase price.’”

MIXED TRANSACTION CONTRACT

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

Mixed Transaction Contract Imposition of Sales and Use Taxes – N.C. Gen. Stat. § 105-164.4(a)(16), as amended, provides, in part, that a mixed transaction contract is taxed in accordance with N.C. Gen. Stat. § 105-164.4H.

Mixed Transaction Contract – N.C. Gen. Stat. § 105-164.3(20b) defines “mixed transaction contract” as “[a] contract that includes both a real property contract for a capital improvement and a repair, maintenance, and installation service that is not related to the capital improvement.”

Repair, Maintenance, and Installation Services Greater Than 25% of Total – N.C. Gen. Stat. § 105-164.4H(d)(2) provides that “[i]f the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property or digital property to fulfill the real property contract is taxed in accordance with [N.C. Gen. Stat. § 105-164.4H].”

Repair, Maintenance, and Installation Services Equal to 25% or Less of Total – N.C. Gen. Stat. § 105-164.4H(d)(1) provides that “[i]f the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the tangible personal property, digital property, or service used to perform those services are taxable as a real property contract in accordance with [N.C. Gen. Stat. § 105-164.4H].” For a mixed transaction contract taxable as a real property contract that includes an allocated sales price of taxable repair, maintenance, and installation services less than or equal to twenty-five percent (25%) of the contract price, the substantiation requirements pursuant to N.C. Gen. Stat. § 105-164.4H(a1) apply.

SERVICE CONTRACTS

The sales price of or the gross receipts derived from a service contract, not otherwise exempt from sales and use tax, continue to be subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

Service Contract Definition – N.C. Gen. Stat. § 105-164.3(38b), as amended, defines “service contract” as “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair or provide another service included in the definition of repair, maintenance, and installation service[s] to digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single repair, maintenance, or installation service, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer’s warranty or dealer’s warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.”

Motor Vehicle Service Contract Definition and Exemption – N.C. Gen. Stat. § 105-164.3(23a), as amended, defines “motor vehicle service contract” as “[a] service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle **when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company.** (Emphasis added.) For purposes of this subdivision, the term ‘motor vehicle dealer’ has the same meaning as defined in [N.C. Gen. Stat. §] 20-286 and the term ‘motor vehicle service agreement company’ is a person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer.” N.C. Gen. Stat. § 105-164.13(61) provides an exemption from sales and use tax for the sales price of or the gross receipts derived from “[a] motor vehicle service contract.” Former N.C. Gen. Stat. §105-164.41(b)(6) provided an exemption for “[a] motor vehicle service contract.”

Service Contract Exemptions – Refer to the discussion under “Certain Repair, Maintenance, and Installation Services and Service Contract Exemptions” for various sales and use exemptions for service contracts. Former N.C. Gen. Stat. § 105-164.41(b) which contained a number of service contracts exemptions was repealed. N.C. Gen. Stat. § 105-164.13(61a), as amended, contains various service contracts that are exempt from sales and use taxes.

N.C. Gen. Stat. § 105-164.13(62), as amended, provides an exemption from sales and use tax for “[a]n item or repair, maintenance, and installation services purchased or used to fulfill a service contract taxable under Article [5 (Sales and Use Tax) of the Revenue Act] if the purchaser of the contract is not charged for the item or services. **This exemption does not apply to the purchase of tangible personal property or digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract.** (Emphasis added.) For purposes of this exemption, the term ‘item’ does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or digital property for which a service contract is sold to a purchaser.”

Service Contract Bundled Transaction – N.C. Gen. Stat. § 105-164.4D(a)(6), which provided a bundling provision for service contracts, is repealed. Refer to the provisions below concerning a “mixed service contract bundled transaction” for additional information.

Mixed Service Contract Bundled Transaction – N.C. Gen. Stat. § 105-164.41(a1) is added and provides that a service contract for real property that includes two or more services, one of which is subject to sales and use tax and one of which is not subject to sales and use tax, is taxed in accordance with the following: “[t]ax applies to the sales price of or gross receipts derived from a mixed service contract unless one of the following applies:

- (1) Allocation. – The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of the taxable portion of the service contract.
- (2) Ten percent (10%) test. – The allocated price of the taxable portion of the service contract does not exceed ten percent (10%) of the price of the contract.”

Certified Operator for a Wastewater System Contract – N.C. Gen. Stat. § 105-164.41(c)(2) provides that the sales price of or the gross receipts derived from “[a] contract to provide a certified operator for a wastewater system” is not subject to sales and use taxes.

PART II: MISCELLANEOUS SALES AND USE TAX EXEMPTIONS

Effective retroactively to January 1, 2014

Admission Charge for an Entertainment Activity Sponsored by a Farmer – N.C. Gen. Stat. § 105-164.4G(f)(6) is added and provides an exemption from sales and use tax for gross receipts derived from an admission charge to an entertainment activity for “[a]n event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under [N.C. Gen. Stat. §] 105-277.3.”

Effective July 1, 2017, for sales and purchases occurring on or after such date

Non-Coin Currency, Investment Metal Bullion, and Investment Coins – N.C. Gen. Stat. § 105-164.13(69) is added and provides an exemption from sales and use tax for “[s]ales of non-coin currency, investment metal bullion, and investment coins. Refer to the [Important Notice: Investment Coins, Investment Metal Bullion, and Non-Coin Currency Sales and Use Tax Exemption](#) published by the Department July 25, 2017 and available on the Department’s website for additional information and definitions applicable to the items exempt from tax.

Wastewater Dispersal Products – N.C. Gen. Stat. § 105-164.13(68) is added and provides an exemption from sales and use tax for “[s]ales of wastewater dispersal products approved by the Department of Health and Human Services under Article 11 of Chapter 130A of the General Statutes.” N.C. Gen. Stat. § 130A-334(14a), also effective July 1, 2017, provides “ ‘wastewater dispersal product’ means a product approved by the Department [of Health and Human Services] for dispersing wastewater effluent within the subsurface dispersal field in a ground absorption system.” Refer to the [Important Notice: Wastewater Dispersal Products List Sales and Use Tax Exemption](#) published by the Department August 11, 2017 and available on the Department’s website for additional information. Following is a direct link to the [list of approved wastewater dispersal products](#) exempt from sales and use taxes as of July 1, 2017 based on the list provided by the Department of Health and Human Services (DHHS). Upon receipt of any additions or deletions from DHHS, the Department will publish an updated list and send an eAlert.

Effective July 1, 2017, for sales and purchases occurring on or after such date

Large Fulfillment Facility – N.C. Gen. Stat. § 105-164.13(5o) is added and provides an exemption from sales and use tax for “[s]ales of equipment, or an accessory, an attachment, or a repair part for equipment,” that meets specific requirements. Refer to the [Important Notice: Sales and Use Tax Exemption for Large Fulfillment Facilities](#) published by the Department on July 24, 2017.

Effective August 11, 2017, for sales and purchases occurring on or after such date

Qualifying and Conditional Farmers – N.C. Gen. Stat. § 105-164.13(1) exempts from sales and use tax “[t]angible personal property, digital property, and services for a farmer . . . as provided in [N.C. Gen. Stat. §] 105-164.13E.” There is no change in the application of sales and use taxes to such transactions but rather this exemption was added for transparency purposes. In order for tangible personal property, digital property, and services to be exempt from sales and use taxes when purchased by a qualifying or conditional farmer, such purchases must be “for use by the farmer in farming operations.” For purposes of N.C. Gen. Stat. § 105-164.13E, “an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals.”

Human Blood, Tissue, DNA, and Organs – N.C. Gen. Stat. § 105-164.13(12), as amended, clarifies that sales of human blood, including whole blood, plasma, and derivatives; human tissue; eyes; DNA; or an organ are exempt from sales and use tax.

Custom Computer Software – N.C. Gen. Stat. § 105-164.13(43), as amended, clarifies the exemption from sales and use tax for “[c]ustom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated **on the invoice or similar billing document given to the purchaser at the time of the sale.**” (Emphasis added.)

Fuel, Piped Natural Gas, and Electricity – N.C. Gen. Stat. § 105-164.13(57a), as amended, removes “secondary metals recycler” from the exemption from sales and use tax and, as rewritten, provides an exemption from sales and use tax for “[f]uel, piped natural gas, and electricity sold to a person subject to tax on certain tangible personal property pursuant to [N.C. Gen. Stat. §] 105-187.51B(a)(6) for use in recycling at its facility at which the primary activity is recycling.”

Boat, Aircraft, and Qualified Jet Engine – N.C. Gen. Stat. § 105-164.13(62b) is added and provides an exemption from sales and use tax for “[t]he amount of repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine for which the purchaser elects for the seller to collect and remit the tax due under [N.C. Gen. Stat. §] 105-164.27A(a3).” Refer to “Part III: Miscellaneous” of this document for amendments to N.C. Gen. Stat. § 105-164.27A(a3) relative to this exemption.

Effective July 1, 2018, for sales and purchases occurring on or after such date

Qualifying Mill Machinery, Mill Machinery Parts or Accessories, and Other Items Exemptions – N.C. Gen. Stat. § 105-164.13(5e) through (5m) are added and continue to exempt qualifying mill machinery, mill machinery parts or accessories, and other items for specific industries from sales and use tax. Additionally, N.C. Gen. Stat. §§ 105-164.13(5a) and (57a) are repealed. Refer to “Part IV: Certain Machinery and Equipment Tax” for information regarding the repeal of Article 5F (Certain Machinery and Equipment Tax) of Chapter 105 of the North Carolina General Statutes.

Repair or Replacement Parts for a Ready-Mix Concrete Mill Exemption – N.C. Gen. Stat. § 105-164.13(5n), is added, and provides an exemption from sales and use tax for “[s]ales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete.”

PART III: MISCELLANEOUS

Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless an amendment increases a sales or use tax liability, then the change is effective August 11, 2017

Modular Home – N.C. Gen. Stat. § 105-164.4(a)(1a)(b), as amended, clarifies that “[t]he sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract.”

Sourcing of Services – N.C. Gen. Stat. § 105-164.4B(a), as amended, clarifies that, “[e]xcept as otherwise provided in this section, a service is sourced where the purchaser can potentially first make use of the service.”

Effective August 11, 2017

Retail Tax Calculation – N.C. Gen. Stat. § 105-164.10, as amended, provides, in part, “[i]n computing [sales and use] tax due, the tax computation must be carried to the third decimal place and must round up to the next cent whenever the third decimal place is greater than four. A person liable for [sales and use] tax . . . may elect to compute the tax due on a transaction on an item or on an invoice basis and apply the rounding rule to the aggregate tax due.”

Boat, Aircraft, and Qualified Jet Engine – N.C. Gen. Stat. § 105-164.27A(a3), as amended, provides that in lieu of purchasing tangible personal property, digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine under a direct pay permit, filing a return, and remitting the tax due to the Secretary of Revenue, **a purchaser may elect to have the seller collect and remit the sales and use tax due on behalf of the purchaser. “Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser’s liability for the tax on the transaction.** (Emphasis added.) Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.”

PART IV: CERTAIN MACHINERY AND EQUIPMENT TAX

Effective July 1, 2018, for sales and purchases occurring on or after such date

Certain Machinery and Equipment Tax Repeal – Article 5F of Chapter 105 of the North Carolina General Statutes is repealed. Therefore, sales and purchases of qualifying mill machinery, mill machinery parts or accessories, and other items for specific industries on or after July 1, 2018 are no longer subject to the one percent (1%) privilege tax. The final Form E-500J, Machinery and Equipment Tax Return, should be filed for the month ending June 30, 2018 or the quarter ending June 30, 2018, depending on the existing filing frequency for the account number. The Department will programmatically close all active Certain Machinery and Equipment accounts as of June 30, 2018 in its system; therefore, the Form NC-BN, Out-of-Business Notification, is not required to be submitted along with the final return for a filing period ending June 30, 2018. The Department will publish additional information regarding the repeal of this tax on the Department’s website before July 1, 2018.